IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO.1052 OF 2001

Narayan Pandurang Desai ...Appellant

vs.

The Municipal Corporation of
Greater Bombay ...Respondent

Mr.Bipin Joshi for the Appellant
Ms Geeta Joglekar for B.M.C.

CORAM: A.S.OKA,J.
DATE : MARCH 23,2007.

JUDGMENT:

1. Heard learned Advocates for the parties. The Appellant is the original Plaintiff who has taken an exception to the Judgment and Order dated 8th September 2001 passed by the learned trial Judge by which a Notice of Motion taken out by the Appellant-Plaintiff for temporary injunction has been dismissed.

2. The Appellant-Plaintiff filed a suit for challenging the notice under section 90 of the Maharashtra Regional and Town Planning Act,1966 issued by the Respondent-Corporation. The challenge in the suit is also to the order dated 18th August 2001 passed by the Assistant Commissioner of the Respondent-Corporation

3. Notice under section 90 of the said Act of 1966 was issued on the ground that the town planning scheme No.III (Ghatkopar)

was sanctioned by the State Government on 26th February 1985 and the suit structure in possession of the Appellant is a contravening structure.

4. The learned Advocate for the Appellant pointed out that during the pendency of the Notice of Motion as well as of this Appeal, the structure has been protected by an ad-interim order. He pointed out that as provided under sub section 3 of section90 of the said Act of 1966, a representation has been made on 18th June 2001 by the Appellant before the State Government against the proposed action under section 90 of the said Act of 1966. He stated that the suit is ready for hearing and in fact the Appellant has already filed an Affidavit of examination-in-chief. He submitted that even in the Affidavit of examination-in-chief, the Appellant has asserted that the representation made by the Appellant under sub section 3 of section 90 of the said Act of 1966 has not been decided by the State Government. He has produced for my consideration a copy of the Affidavit of examination in chief to which the office copy of the representation dated 18th June 2001 has been annexed. A xerox copy annexed to the Affidavit shows that the same has been received by the State Government on 19th June 2001. The learned Advocate for the Respondent submitted that the suit structure cannot be protected and effect will have to be given to the Town Planning Scheme by demolishing the same. She submitted that no interference is

called for.

5. It must be noted here that right from the year 2001, by ad-interim orders granted by the Trial Court and by this Court, the suit premises were protected. Now, the suit has reached the stage of hearing and an Affidavit of examination-in-chief is filed. It is pointed out to me that the representation made under sub section 3 of section 90 of the said Act of 1966 is pending with the State Government. As of today, there is nothing on record to show that the said representation was decided. Whether the said representation is still pending and if the same is pending, what is the effect of pendency of the representation, are the questions which are to be decided at the time of final disposal of the suit. As the suit is ready for hearing, any decision on the issues raised in this Appeal will cause prejudice to either parties.

6. Considering the peculiar factual aspects of the case, Appeal deserves to be disposed of by directing that ad-interim order which was granted during the pendency of the Appeal will continue to operate till the final disposal of the suit. Interests of justice will be served if the Trial Court is directed to decide the suit expeditiously. Hence, Appeal is disposed of by passing following order :

i) Ad-interim order passed by this Court on 28th November 2001 in this Appeal will continue to operate till the final disposal of the suit.

ii) The trial Court is directed to decide the suit as expeditiously as possible and preferably on or before 31st March 2008.

iii) All contentions of the parties on the merits of the suit are expressly kept open.

iv) It is made clear that the Trial Court will decide the suit without being influenced by the order impugned in this Appeal as well as the order passed by this Court by which ad-interim relief has been continued.

v) Parties to act upon an authenticated copy of this order.

JUDGE